

# **DRAFT**

## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION**

### **SPECIAL ORDER BY CONSENT**

#### **ISSUED TO**

**SOUTH WALES UTILITY, INC.**

#### **FOR**

**SOUTH WALES WASTEWATER TREATMENT PLANT**

***(VPDES PERMIT NO. VA0029238)***

### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d) and 10.1-1185 between the State Water Control Board and the South Wales Utility, Inc. regarding the South Wales Wastewater Treatment Plant for the purpose of resolving certain violations of the State Water Control Law and Regulations.

### **SECTION B: Definitions:**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 62.1-44.7 and 10.1-1184.

3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.
6. “WWTP” means the South Wales Wastewater Treatment Plant owned and operated by South Wales Utility, Inc.
7. “South Wales” means South Wales Utility, Inc., a Virginia corporation, and its affiliates, partners, subsidiaries, and parents.
8. “NVRO” means the Northern Virginia Regional Office of DEQ, located in Woodbridge, Virginia.
9. “Permit” means Virginia Pollution Discharge Elimination System Permit No. VA0029238 which was reissued on August 21, 2000, and expires on August 21, 2005.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. The WWTP receives wastewater from the South Wales Golf Course and approximately 340 homes in the South Wales subdivision located in Culpeper County. The WWTP is the subject of the Permit which authorizes discharges of wastewater at a rate of 70,000 gallons a day to an unnamed tributary of the Rappahanock River, in the Rappahanock River Basin.
2. The Board has evidence to indicate that the Facility has violated the Permit and VPDES Permit Regulation 9 VAC 25-31-50.A by exceeding permit effluent limits for total suspended solids (“TSS”); biochemical oxygen demand (“BOD<sub>5</sub>”); chlorine; and ammonia. DEQ issued Warning Letters and Notices of Violation (“NOV”) for those apparent violations as follows: WL No. W2003-01-N-1004 issued January 6, 2003; WL No. W2003-02-N-1003 issued February 4, 2003; WL No. W2003-03-N-1006 issued March 7, 2003; NOV Referral No. W2003-04-N-0005 issued April 4, 2003; NOV No. W2003-05-N-0005 issued May 8, 2003; NOV No. W2003-10-N-0006 issued October 23, 2003; and NOV No. W2003-11-N-0004 issued November 18, 2003.
3. On August 26, 2002, the WWTP’s secondary clarifier drive failed causing the sludge scraper to break. The broken sludge scraper prevented the efficient removal and return of

activated sludge from the secondary clarifier to the aeration basin. Due to the equipment failure, the WWTP could not effectively manage solids and, as a consequence, began exceeding Permit effluent limits for TSS and BOD<sub>5</sub> in September 2003. South Wales immediately notified DEQ of the equipment failure and attempted to correct the problem by installing three submersible pumps in the clarifier to withdraw solids. The pumps were partially effective but pockets of sludge remained in the clarifier causing continued Permit exceedences. South Wales took additional corrective measures in October and November 2002, including manually scraping the clarifier and installing additional surface skimmers to collect floating solids, but these measures were not sufficient to correct the problem.

4. In December 2002, South Wales submitted to DEQ plans and specifications for modifying the sludge return system using airlift pumps and a sequential timer to control sludge return rates. In February 2003, South Wales completed modifications to the sludge return system and treatment efficiency began to improve, but in March, a blower supplying air to the airlift system failed and had to be replaced. This additional equipment failure coupled with extremely cold temperatures during the winter months reduced treatment efficiency in March but, in April 2003, the WWTP began meeting TSS and BOD<sub>5</sub> limits.
5. The WWTP began to experience problems with the sludge return system again in July 2003 and, as a consequence, exceeded the monthly concentration average Permit effluent limit for TSS during that month. DEQ staff met with representatives of South Wales on August 5, 2003, to discuss South Wales's plans for improving the WWTP's performance to ensure consistent compliance with Permit limits. During the meeting, South Wales representatives explained that South Wales's long-term strategy was to replace the existing WWTP with a new regional facility. At the time of the meeting, South Wales anticipated that, by the end of 2003, it would complete negotiations with Culpeper County regarding the terms of an agreement to transfer ownership of the new facility to the County and secure a conditional use permit for its construction.
6. In the meantime, South Wales believed that, while the recent improvements and repairs to the existing WWTP should have been sufficient to ensure compliance with Permit effluent limits, the WWTP as presently configured could no longer manage high flows efficiently and that this, in turn, could impact the WWTP's future performance. In addition, because of the WWTP's age, procurement of replacement parts was difficult and South Wales believed that any additional future repairs might not be possible. For these reasons, South Wales agreed to provide DEQ with a plan and schedule for replacing the WWTP's clarifier, if negotiations with the County regarding construction of the new facility continued into 2004. Replacement of the secondary clarifier should ensure the WWTP's consistent compliance with Permit effluent limits and provide for sufficient additional storage capacity need to properly manage high flows because the existing secondary clarifier can then be

adapted for use as an equalization basin.

7. South Wales is continuing its negotiations with Culpeper County and has not yet reached an agreement regarding transfer of ownership of the new facility to the County. Under the circumstances, that portion of the plan and schedule provided to DEQ by South Wales on September 5, 2003, for replacing the existing WWTP's secondary clarifier has been incorporated into Appendix A of this Order. Appendix B of this Order also provides interim effluent limits for TSS, BOD, and ammonia while the upgrade is under construction. The Order requires that South Wales complete construction of the upgrade by December 2004.

#### **SECTION D: Agreement and Order**

Accordingly the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders South Wales, and South Wales agrees, to perform the actions described in Appendices A and B of this Order. In addition, the Board orders South Wales, and South Wales agrees, to pay a civil charge of \$9,400.00 within 30 days of the effective date of the Order in settlement of the violations described in this Order. Payment shall be made by check payable to the "Treasurer of Virginia" and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

Either on a transmittal letter or as a notation on the check, South Wales shall indicate that the payment is submitted pursuant to this Order and shall include the Federal Identification Number for South Wales.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of South Wales, for good cause shown by South Wales, or on its own motion after notice and opportunity to be heard.
2. This Order addresses and resolves those violations specifically identified herein, including those matters addressed in the Warning Letters and the NOV's, as listed above in Section C2, and any additional exceedences of Permit effluent limits reported in the WWTP's November 2004 discharge monitoring report. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking

any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the WWTP as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, South Wales admits the jurisdictional allegations, the factual findings, and conclusions of law contained herein.
4. South Wales consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of the Order.
5. South Wales declares it has received fair and due process under the Administrative Process Act, Va. Code § 2.2 - 4000 *et seq.*, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by South Wales to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. South Wales shall be responsible for its failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. South Wales shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. South Wales shall notify the DEQ Regional Director of NVRO in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order.

Such notice shall set forth:

- a. the reasons for the delay or noncompliance;

- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which South Wales intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and South Wales. Notwithstanding the foregoing, South Wales agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to South Wales. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve South Wales from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

By its signature below, South Wales voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of \_\_\_\_\_, 2004.

---

Robert G. Burnley, Director  
Department of Environmental Quality

South Wales voluntarily agrees to the issuance of this Order.

By: \_\_\_\_\_

Consent Special Order  
South Wales Utility, Inc.  
South Wales WWTP  
Page 7

Date: \_\_\_\_\_

Commonwealth of Virginia  
City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this \_\_\_\_ day of

\_\_\_\_\_, 2004 by \_\_\_\_\_, who is  
(name)

\_\_\_\_\_ for South Wales on behalf of the corporation.  
(title)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_.

## **APPENDIX A SCHEDULE OF COMPLIANCE**

South Wales agrees to:

1. By April 1, 2004, submit to DEQ for review and approval, plans and specifications for upgrading the WWTP to replace the secondary clarifier in order to ensure compliance with final Permit effluent limits;
2. By December 31, 2004, complete construction of the upgrade in accordance with the approved plans and specifications;
3. Within 30 days of completing construction and issuance by DEQ of the certificate to operate, achieve compliance with final Permit effluent limits;
4. Pending completion of the upgrade, operate the WWTP in a manner that produces the best quality effluent of which it is capable in order to minimize any additional exceedences of the ammonia, TSS, and BOD<sub>5</sub>, Permit effluent limits and impacts to water quality that may occur while the upgrade is under construction; and
5. Conduct biweekly in-stream monitoring for dissolved oxygen and ammonia as nitrogen until construction of the upgrade is completed and submit the monitoring data with the WWTP's monthly discharge monitoring reports.